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B-224702, 87-2 CPD P 128

Matter of: Acumenics Research and Technology, Inc.--Contract Extension

August 5, 1987

DIGEST

1. An 8(a) services contract with no options may not be extended by a procuring agency after the contractor loses its eligibility to participate in the 8(a) program from the Small Business Administration.

2. Sole-source extension of litigation support services contract consisting mainly of clerical tasks is not justified where the agency has not established that these services are unavailable from other responsible sources. In any case, since the agency did not comply with mandatory justification and publication procedures, the extension was not authorized.

3. Noncompetitive award pursuant to provision in Competition in Contracting Act, 41 U.S.C. Sec. 253(c)(7) (Supp. III 1985), which permits such awards where the secretary of an executive agency determines that it is necessary in the public interest, is only authorized if the secretary has complied with statutory "report and wait" provision 41 U.S.C. Sec. 253(c)(7)(b), under which the secretary must give 30 days notice to Congress prior to contract award.

4. Where an agency has no legal authority to extend a contract and the contractor does not sign the contract extension, no binding contract extension came into effect and the agency is without legal authority to continue to obtain the services under the contract extension. However, the contractor is entitled to be paid for the services it performed on a quantum meruit basis.

5. Litigation support services to support particular litigation, which are primarily clerical in nature and which require no final report or product to be delivered, are continuing and recurring in nature and thus severable into the various pertinent time periods encompassing the service.

6. An executive agency may not obligate its expired fiscal year funds on a contract for litigation support services, where the obligation is not authorized by law and the services extend beyond the fiscal year whose appropriation has been charged.

DECISION

The Inspector General's Office of the United States Department of Labor requests the Comptroller General's legal opinion on certain issues related to a contract held by Acumenics Research and Technology, Inc., for litigation support services in connection with certain litigation under the Employee

Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Secs. 1001 et seq. (1982).

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I. BACKGROUND

On June 8, 1982, Labor awarded cost-plus-fixed-fee contract No. J-9-N-2-0061 to the Small Business Administration (SBA), which, in turn, subcontracted under the SBA's section 8(a) program to Acumenics. See 15 U.S.C. Sec. 637(a) (1982 and Supp. III 1985). The contract ran to September 30, 1982, with total funding of $395,451. The contract was transferred to the Department of Justice, which shares ERISA litigation responsibility, and back to Labor by various agreements. By a number of unilateral and bilateral contract modifications, this contract (now No. J-9-P-4-0082) has been extended through March 30, 1989, even though Acumenics lost its eligibility to participate in the 8(a) program in fiscal year 1983. The departments of Labor and Justice have increased the contract value to $9,005,756 and fully funded the contract with fiscal year 1982 and 1983 funds. Labor considers the litigation support services to be nonseverable because the ERISA litigation in question is ongoing.

The Inspector General has raised three questions concerning the propriety, legal enforceability and funding of the various modifications to the contract. We requested Labor's Solicitor to respond and submit his views on these questions. In response, the Solicitor stated that "in order to avoid even the appearance of impropriety," Labor was terminating the Acumenics' contract, but he did not respond to the three questions. This contract termination occurred effective July 2, 1987. The Inspector General has reiterated its request that our Office respond to its questions, notwithstanding the contract termination.

II. QUESTIONS AND SUMMARY RESPONSES

The Inspector General's questions and our summary responses are contained in this section. The subsequent sections set forth the underlying legal and factual bases for our responses.

The Inspector General first asks:

> "Is the current Contract No. J-9-P-4-0082 a legal, enforceable document? If so, who are the parties? Is it proper to award modifications for additional work and additional funds with only the signature of the government? Is it acceptable to award these modifications on an 8(a) basis after the subcontractor has lost 8(a) status?"

Response: The last two contract extensions were done without legal authority, either under section 8(a) of the Small Business Act, the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. Sec. 253 (Supp. III 1985), or any other law. An 8(a) contract may not be extended as an 8(a) contract after the subcontractor has lost its 8(a) eligibility. Under the circumstances, no binding contract extension came into effect under modification No. 9, and Labor was without legal authority to continue obtaining these services through the SBA/Acumenics contract. In view of this response, it is not necessary to address the remaining parts of the question.

The Inspector General's second question is:

> "Are the litigation support services to be provided by Acumenics severable?"

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Response: Yes. Since the SBA/Acumenics litigation support services contract only obligates the contractor to perform essentially clerical services within specified periods of performance and funding and does not require a final report or product, the services to be provided under the contract and its modifications are severable on a yearly basis.

The third question is:

"Can [fiscal year] 1982 and [fiscal year] 1983 funds be obligated in [fiscal years] 1983 through 1986 to pay for services in those years through [fiscal year] 1989?"

Response: No. Where, as here, the services are severable, expired fiscal year appropriations cannot be charged to the contract to fund contract extensions beyond those fiscal years.

III. FACTS

On June 8, 1982, Labor entered into an 8(a) contract with SBA/Acumenics with an estimated cost and fixed fee of $395,451 to support specific litigation of the departments of Labor and Justice under ERISA. This contract was funded with Labor's 1982 fiscal year appropriation. The contract was a standard cost-plus-fixed-fee contract, whereby the government agreed to reimburse the contractor for its reasonable and allocable costs in performing the contract tasks up to the contract's stated estimated cost of performance. The contract was for a fixed period of performance ending September 30, 1982, and several modifications have extended the contract period of performance for additional fixed periods. The contract contained no options to extend the period of performance or increase the contract quantities. The subsequent contract extensions have not substantively changed the five basic contract tasks, but have increased the contract value and funding to $9,005,756 and extended the period of performance to March 30, 1989.

The contract statement of work requires the development of a "litigation support services data base" for specific ERISA litigation. To accomplish this purpose, the contractor is required to perform five specific tasks. Task 1, "Document Processing," requires the contractor to code the documents by "provid[ing] clerical and paralegal support services to inventory, copy control, retrieve, bind, number, index, quality control and provide evidentiary research on the documents required for processing." Task 2, "Microfilming," requires the contractor to provide personnel to operate microfilming equipment to establish an on-site microfilming facility at Labor. Task 3, "Transcript and Pleading Conversion," requires the contractor to convert transcripts, pleading and legislative history into machine-readable form for loading in the "JURIS" computer system for retrieval. Task 4, "Computer Processing," requires the contractor to provide computer processing services in preparing programs and queries for the "INQUIRE" and "JURIS" computer systems. Task 5, "Trial Support," requires the contractor to provide clerical, secretarial and paralegal personnel and office and equipment necessary to a trial support facility at various trial sites during the performance of the contract. The first three contract tasks each had a total estimated quantity expressed in "pages." These quantities were increased as the contract was extended.

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The Inspector General reports that Justice took over this contract in September 1982 because the Labor contracting officer became aware that Acumenics was losing its section 8(a) eligibility and status from the SBA and

he found no basis to extend the contract further. Justice then entered into an 8(a) contract with SBA/Acumenics (No. JRATR-82-C0011) extending from September 30, 1982, to September 30, 1983, in the amount of $1,142,756. This was funded with Justice's supplemental appropriations. Pub.Law 98-63, 97 Stat 301, 353, July 30, 1983. Contract modification No. 3, dated August 16, 1983, extended the contract to June 30, 1985. This additional work increased the contract value by an additional $2,563,000 to $3,705,756, which was fully funded from the 1982 fiscal year appropriation of Labor. (FN1)

Acumenics reportedly lost its eligibility to participate in SBA's 8(a) program by September 30, 1983. On May 21, 1984, by modification No. 5, the contract was transferred back to Labor, which assigned it contract No. J-9-P-4-0082. Modification No. 6, dated January 11, 1985, increased the contract value to $5,305,756, and fully funded the additional $1,600,000 contract increase from Labor's 1982 fiscal year appropriation. Modification No. 7, dated July 25, 1985, further extended the contract to March 30, 1986, but provided no further funding.

Modification No. 9, dated March 28, 1986, extended the contract period to March 30, 1989, and increased the contract value and funding to $9,005,756. Additional funding of $842,000 was charged to Labor's fiscal year 1982 appropriation and $2,858,000 was charged to Labor's fiscal year 1983 appropriation. This modification was signed only by Labor's Assistant Secretary for Administration and Management and not by the SBA or Acumenics. This modification was expressly approved by the Secretary of Labor, who, on the same date advised Congress that this contract extension was "necessary in the public interest" to complete the "nonseverable litigation support services required by the prosecution of" the ongoing ERISA cases.

IV. FIRST QUESTION

A. No Authority to Extend 8(a) contract

Under the 8(a) program, SBA may enter into contracts with socially and economically disadvantaged small business concerns found eligible by SBA. See 15 U.S.C. Sec. 637(a); Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 19.8 (1986). Where a contractor remains eligible to participate in the 8(a) program, options in 8(a) contracts can be exercised under the section 8(a) authority. See Gallegos Research Corp.--Reconsideration, B-209992.2, B-209992.3, Nov. 21, 1983, 83-2 C.P.D. p 597; B-215350, June 27, 1984 (letter to Representative Robert E. Badham). Moreover, it is proper to exercise, in accordance with the FAR, existing options in 8(a) contracts after an 8(a) firm has lost its 8(a) status. Id. However, an agency may not continue or extend an 8(a) contract, which contains no options, with a party no longer eligible to participate in the 8(a) program. Id. Even if there is a need for further litigation support services, this does not provide a legal basis to extend an 8(a) contract with an ineligible firm beyond the contract completion date. 15 U.S.C. Sec. 637(a); 13 C.F.R. Secs. 124.1-1(d)(4) and (e)(4) (1986); cf. Data Transformation Corp., B-220581, Jan. 16, 1986, 86-1 C.P.D. p 55 (because an incumbent 8(a) contractor's status had expired, a procuring agency justified a new noncompetitive contract to that contractor instead of extending the 8(a) contract to meet its urgent requirements).

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In this case, modifications Nos. 7 and 9 improperly extended the SBA/Acumenics contract. Modification No. 7 was executed in July 1985, almost 2 years after Acumenics lost its 8(a) status, and extended the 8(a) contract

to March 30, 1986. Modification No. 9 was executed more than 2 1/2 years after Acumenics lost its 8(a) status and extended the Acumenics/SBA contract yet another 3 years. It is notable that the SBA has not executed modification No. 9 and there is no indication that the SBA approved or agreed to the contract extension. See FAR, 48 C.F.R. Sec. 19.809-1. Therefore, Labor had no legal authority to extend this contract with the SBA/Acumenics in modifications Nos. 7 and 9.

B. Extension of Contract Not Authorized by CICA

The record indicates that Labor contracting officials properly concluded before the execution of modification No. 9, that this contract could not be extended under the 8(a) authority since Acumenics' 8(a) status had expired. Consequently, the using activity, the Solicitor's Office, was requested to justify this noncompetitive contract extension in accordance with CICA, since the contract extension was beyond the scope of the contract.

A contract extension beyond the scope of a contract is only proper if separately justified as a noncompetitive procurement under CICA. See Washington National Arena Limited Partnership, 65 Comp.Gen. 25 (1985), 85-2 C.P.D. p 435; Resource Consultants, Inc., B-221860, Mar. 27, 1986, 86-1 C.P.D. p 296; Data Transformation Corp., B-220581, supra; cf. WSI Corp., B-220025, Dec. 4, 1985, 85-2 C.P.D. p 626 (exercise of an "option" not within the scope of the initial award is equivalent to the issuance of a sole-source contract and must be justified under CICA). CICA requires agencies to use competitive procedures to obtain full and open competition unless the procurement is found to fall under one of the seven specific instances where other than competitive procedures are authorized. See 41 U.S.C. Secs. 253(a)(1) and (c).

The record shows that the Solicitor's Office tried to justify to Labor procurement officials this noncompetitive award under the first exception contained in 41 U.S.C. Sec. 253(c)(1). (FN2) That section provides that other than competitive procedures can be used:

> "... only when the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency."

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The record shows that the propriety of extending the contract by modification No. 9 was the subject of considerable debate within Labor. The Solicitor's Office found that they required the same contractor to complete the "nonseverable support services" to assure continuity in the ERISA cases. The Solicitor's Office states that this extension was required solely by court directed changes in the ERISA litigation timetables and these changes were beyond the control of Labor and Acumenics. The Solicitor's Office also stated that uncertainties in the future stages of the litigation made it impracticable to obtain another contractor.

Labor procurement officials found that this last contract extension was readily severable from the previously performed services. In this regard, they found that 99 percent of all documents pertinent to the litigation had already been coded and put into the system under the contract. The remaining work to be done under the modification is document and transcript retrieval and the supplying of clerical, secretarial and paralegal support plus office space at trial locations. Since virtually all of the documents had been coded, the procurement officials did not find this noncompetitive extension of

the contract could be justified under CICA, since other firms could perform the remaining clerical work.

The record indicates that Labor did not establish that only Acumenics could complete the litigation support services, which mainly consist of clerical tasks, or that other responsible sources could not perform these services. In this regard, the Solicitor's Office, in its recent response to our query, admitted that the data base was substantially completed and that primarily administrative and clerical tasks remained to be provided under the modification. Consequently, this noncompetitive procurement was not authorized by 41 U.S.C. Sec. 253(c)(1).

In any case, 41 U.S.C. Sec. 253(f) requires that the contracting officer prepare a written justification before effecting a sole-source procurement. This justification must identify the specific statutory exception from the requirement to use competitive procedures and demonstrate, why, based on the proposed contractor's qualifications or the nature of the procurement, the exception is applicable. See EDO Corp., B-224386, Sept. 18, 1986, 86-2 C.P.D. p 322. The justification must then be approved at an appropriate higher level official and the procurement announced in the Commerce Business Daily. Id. The record indicates that none of these mandatory procedures to justify this noncompetitive procurement were effected. Cf. WSI Corp., B-220025, supra (agency substantially complied with the CICA justification requirements).

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C. Public Interest Justification For Sole-Source Extension

On March 28, 1986, the Secretary of Labor notified Congress that the public interest required the contract be extended. This determination may be a justification for a noncompetitive procurement under the seventh exception to the CICA requirement that competitive procedures be employed. See 40 U.S.C. Sec. 253(c)(7). That section provides that noncompetitive procedures can be used if:

> "(7) the head of the executive agency--
>
> "(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and
>
> "(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract."

A procurement need not be otherwise justified under 41 U.S.C. Sec. 253(f) (discussed above) if authorized under 41 U.S.C. Sec. 253(c)(7). 41 U.S.C. Sec. 253(f)(2).

This seventh exception was in neither the House nor Senate versions of the Deficit Reduction Act of 1984 of which CICA is a part. It was added by the Conference Committee which explained:

> "... a conference substitute includes a seventh exception which allows the head of an agency, on a non-delegable basis, to determine when it is necessary in the public interest to use procedures other than competitive procedures for a particular procurement. This waiver is to be exercised, if at all, on a case-by-case basis rather than for a class of procurements. The head of an agency is required to notify both Houses of Congress in writing of his or her intention to use this exception thirty days before the contract is awarded."

We have held that determinations by the secretary of an executive agency

that the "public interest" mandates a particular action by the agency are matters of discretion vested in his or her office and not subject to question by our Office. See Maremont Corp., 55 Comp.Gen. 1362, 1393 (1976), 76-2 C.P.D. p 181; Lear Siegler, Inc., 64 Comp.Gen. 452, 456 (1985), 85-1 C.P.D. p 403 ("public interest" determinations by the concerned secretary pursuant to the Buy American Act are not subject to question).

However, in this case, if the Secretary's determination was intended to justify a sole-source award to Acumenics under 41 U.S.C. Sec. 253(c)(7), it did not accomplish this purpose. In this regard, the Secretary did not give Congress the required "not less than 30 days notice before" awarding the contract extension. This prior notification of Congress requirement is a type of "report and wait" provision. See Immigration & Naturalization Service v. Chadha, 462 U.S. 919, 935, f. n. 9 (1983). Where there is an applicable "report and wait" statutory requirement, an agency is without authority to execute a contract until it makes the requisite determination and waits the required period of time. City of Alexandria v. United States, 737 F.2d 1022, 1027 (Fed.Cir.1984); cf. Alaska Airlines, Inc. v. Donovan, 766 F.2d 1550 (D.C.Cir.1985) (agency is without authority to make regulations effective if it has not complied with applicable "report and wait" provision).

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Furthermore, we note that the March 28, 1986, letters notifying Congress of the contract extension do not indicate the notification is to satisfy the 41 U.S.C. Sec. 253(c)(7) requirements or that the extension was justified under that exception. Rather, the Secretary stated that Labor's Solicitor's Office advised that CICA was inapplicable and the extension was necessary in the public interest.

D. No Binding Contract

In view of the foregoing, we find that at the time of execution of modifications No. 9, Labor was without authority under CICA or the Small Business Act to contract with Acumenics or extend the SBA/Acumenics contract. (FN3) Moreover, neither SBA nor Acumenics signed modification No. 9 so as to bind Acumenics to perform this work. See 1 Corbin on Contracts, p 70 (1963); FAR, 48 C.F.R. Secs. 4.102, 43.103(a). Under these circumstances, no binding contract extension came into effect under modification No. 9 and Labor is without legal authority to continue obtaining these services from Acumenics through the SBA/Acumenics contract. See United States v. Amdahl Corp., 786 F.2d 387 (Fed.Cir.1986). Nevertheless, Acumenics is entitled to be paid for the services that it has performed pursuant to modification Nos. 7 and 9 on a quantum meruit basis. Id.

V. SECOND QUESTION

Severability of Contract

In support of its continuing noncompetitive extensions of the contract and obligation of expired 1982 and 1983 fiscal year appropriations on this contract, Labor's Solicitor's Office has characterized the contract services as "nonseverable" because of the ongoing and continuing nature of the ERISA litigation which these services support. The Inspector General questions whether these services are severable.

We have held that services performed under a government contract should be regarded as severable into the various pertinent time periods encompassed by

the services, when the need for the services is continuing and recurring. 65 Comp.Gen. 741, 743 (1986); 61 Comp.Gen. 219, 221 (1981). On the other hand, if the services contemplate a required outcome, product or report, the services may be regarded as nonseverable. 65 Comp.Gen. 741, 743-744, supra; 64 Comp.Gen. 359, 364-365 (1985).

In the present case, the purpose of the contract was to develop and provide a data base for the specific ERISA litigations involving the Teamster's Union pension funds. However, the tasks implementing the contract's purpose are essentially secretarial and clerical in nature. Moreover, the contract task "quantities" are expressed in estimated pages of text; these quantities were increased as the contract was further funded as extended. This indicates that the services are continuing and recurring in nature.

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There is no final report or product to be delivered under the contract. Indeed, the contract and modifications only require the contractor to perform these services to the extent funds have been made available within the contract's period of performance. There is no requirement in the contract for the contractor to continuously support this litigation to conclusion or even until a complete litigation data base has been developed.

In view of the foregoing, and since the contract was funded with fiscal year funds, the contract services were severable on a yearly basis.

VI. THIRD QUESTION

Improper Obligation of Appropriations

Finally, the Inspector General questions whether Labor could obligate fiscal year 1982 and 1983 funds when it executed contract modifications in fiscal years 1983 through 1986 to pay for services in those years through fiscal year 1989. We conclude that Labor charged the wrong fiscal year accounts to fund these contract modifications.

In this case, both the applicable laws appropriating funds for Labor for fiscal years 1982 and 1983 state: "No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." Section 508 of title V of H.R. 4560, Labor Appropriations Act incorporated into Joint Resolution Making continuing Appropriations for Fiscal Year 1982, Pub.Law 97-92, 95 Stat. 1183, Dec. 15, 1981; section 508 of title V of Labor Appropriations Act in Joint Resolution Making Further Continuing Appropriations for Fiscal Year 1983, Pub.Law 97-377, 96 Stat. 1830, 1905, Dec. 2, 1982. That is, appropriations made for a fiscal year cannot be obligated after the expiration of the appropriation's period of availability, i.e., the end of the fiscal year, unless otherwise provided by law. 58 Comp.Gen. 321 (1979); 37 Comp.Gen. 861 (1958); Obligating Letter Contracts, B-197274, Sept. 23, 1983, 84-1 C.P.D. p 90.

The Solicitor's Office argues that Congress authorized the continuing use of Labor's fiscal year 1982 appropriation in the Conference Committee Report on the Supplemental Appropriation Act for 1983, Pub.Law 98-63, 97 Stat. 301, 353, July 30, 1983. See H.Rep. No. 98-308, 129 Cong.Rec. H-5358, H-5375, July 20, 1983. Among other things, that Act appropriated $1,100,000 for Justice to support Labor's ERISA activities. The Conference Report explains:

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"The conferees are agreed that these funds shall be available for the

cost of continuing the portion of a contract for computer processing which supports three [Labor] investigations under [ERISA]. The conferees note that [Labor] has heretofore reimbursed [Justice] for this item but has run out of funds for this purpose for the remainder of fiscal year 1983. Although the conferees have provided funding for this item under [Justice's appropriation] due to this emergency situation, the conferees strongly believe that such funding should normally be the responsibility of [Labor], and, therefore, expect [Labor] to include this item in its own budget in the future." 129 Cong.Rec. H-5375, supra.

This statement of congressional intent does not authorize the obligation of expired Labor appropriations. To the contrary, it requires Labor to budget for its ERISA program support in its future requests for appropriations. Moreover, the conferees were obviously under the impression that Labor had run out of funds for ERISA's litigation support for the remainder of fiscal year 1983. Therefore, they could not have intended that expired 1982 and 1983 appropriations be used to fund the contract in the future; they thought there were no such funds remaining. Consequently, Labor was not otherwise authorized by law to obligate expired 1982 or 1983 appropriations on this contract.

Expired fiscal year funds can only be obligated by subsequent modifications to contracts entered into that prior fiscal year and if the modifications represent an antecedent liability enforceable under the initial contract. 65 Comp.Gen. 741, supra; 59 Comp.Gen. 518 (1980) as modified in 61 Comp.Gen. 609 (1982); 37 Comp.Gen. 861, supra. Determinations of what constitutes a bona fide need of a particular fiscal year depends primarily upon the facts and circumstances of a particular case. 64 Comp.Gen. 359, supra at 364; 61 Comp.Gen. 184, 186 (1981).

Generally, contracts for services may only be made for the duration of the appropriation period because a bona fide need for a particular service usually only arises at the time the services are to be performed. 64 Comp.Gen. 359, supra at 364. The period of performance of service contracts can extend beyond the duration of the appropriation period only where the portion of the contract to be performed after the expiration of the appropriation period is not severable from the portion performed during the period. 31 U.S.C. Sec. 1502(a) (1982); 65 Comp.Gen. 741, supra; 64 Comp.Gen. 359, supra at 364; 60 Comp.Gen. 219, supra. As discussed above, the essentially clerical services involved here are of a continuing and recurring nature and thus are considered severable in nature.

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Therefore, Justice and Labor were without authority to utilize 1982 and 1983 fiscal year funds to extend this contract beyond the end of those fiscal years. 64 Comp.Gen. 359, supra at 364. Also, expired 1982 and 1983 fiscal year appropriations were improperly charged when this contract was funded in three modifications totaling $7,863,000. Specifically, on August 16, 1983, modification No. 3 improperly obligated $2,563,000 in fiscal year 1982 funds appropriated for Labor; on January 11, 1985, modification No. 6 improperly obligated $1,600,000 of Labor's fiscal year 1982 funds and on March 28, 1986, modification No. 9 obligated $842,000 of funds appropriated for Labor for fiscal year 1982 and $2,858,000 of funds appropriated for Labor for fiscal year 1983.

In view of the foregoing, Labor should adjust its accounts to pay for the reasonable value of the services rendered during each fiscal year out of that

fiscal year's appropriation. Labor should also deobligate the expired funds that were improperly obligated.

If any of Labor's unobligated fiscal year appropriations are not sufficient to make the adjustment, then a reportable Anti-Deficiency Act violation occurred. 63 Comp.Gen. 422, 424 (1984); 57 Comp.Gen. 459 (1978); 31 U.S.C. Sec. 1351 (1982).

Milton J. Socolar

Comptroller General of the United States

FN1 As explained below, the conferees on Justice's 1983 Supplemental Appropriation Act recognized that this work would be funded from Labor's future appropriations. See H.Rep. No. 98-308, 129 Cong.Rec. 5358, 5375, July 20, 1983.

FN2 The other ordinary exceptions to using competitive procedures, 41 U.S.C. Secs. 253(c)(2), (3), (4), (5) and (6), are not applicable.

FN3 Unlike modification No. 9, both SBA and Acumenics executed modification No. 7, although Acumenics' 8(a) status had expired. Neverthless, Labor and Acumenics may have relied upon SBA's execution of modification No. 7 as evidence that there was requisite authority. Therefore, we cannot conclude that this modification was not binding. Cf. PRC Computer Center, Inc. et al, 55 Comp.Gen. 60, 68 (where an executive agency received authorizations from cognizant agencies (General Services Administration and Office of Management and Budget) under the Brooks Act, 40 U.S.C. 759 (1982), that it had the authority to proceed with an automatic data processing procurement, the legal validity of the award was not questioned under that Act, since the agency was entitled to rely upon the cognizant agencies' authorizations.